



In the

# Supreme Court of the United States

OCTOBER TERM, 1977

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No. 77-396

VINCENT PACELLI,  
*Petitioner*

v.

UNITED STATES OF AMERICA,  
*Respondent*

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PETITIONER'S REPLY BRIEF

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1. The Government seeks to avoid the fact that Godwin's testimony squarely contradicts that of the Government's witness Hedges by characterizing it as "uncorroborated hearsay" (G.B. 4). Even if it were such, a hearing would plainly be required, but it is neither. Godwin's testimony that Hedges told him he had been promised a sentence reduction, money and "anything" if he would testify was given under oath, in a United States District Court. It was subjected to cross-examination by the Government. It was, therefore, not hearsay. 5 Wigmore, Evidence §1370\*. Indeed, since petitioner was denied a

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\* Rule 801, Federal Rules of evidence, classifies such prior testimony as hearsay but admits it under the "former testimony" exception. Rule 804.

hearing in support of his petition, wherein he could have presented Godwin's testimony to the District Judge below, the Godwin evidence was virtually the best evidence which could possibly be produced in support of the §2255 petition.

To call such evidence "uncorroborated" is equally erroneous and ignores the record. The evidence was corroborated by the uncontested facts that Hedges actually received (1) the ten-year sentence reduction which he told Godwin he had been promised, (2) \$3,000 cash, (3) an apartment, (4) a reduction of bail, (5) help with State authorities on a gun charge, and other considerations. Petitioner could hardly have made a stronger case that Hedges lied to petitioner's jury when he swore he was promised and expected nothing.

The Government's claim that Godwin's testimony should be rejected without hearing it because another jury convicted other defendants when it was offered in the *Guanti* case (G.B. 4) is absurd. The record below does not suggest what the evidence against the defendants in *Guanti* was, nor whether Hedges again lied as he did in petitioner's trial. It is impossible to infer that the *Guanti* jury disbelieved Godwin. Moreover, that is not the issue. The judge below never heard Godwin. Neither did petitioner's jury. Hedges was the only witness against petitioner, and he manifestly perjured himself. In any event, petitioner is entitled to an opportunity to prove that in the District Court. It is also worth noting that nowhere in the Government's lengthy affidavits submitted in opposition to petitioner's motion in the District Court is there any statement, hearsay or otherwise, from Dugan, Hedges or anyone else denying the truth of Godwin's testimony in *Guanti* or the perjuriousness of Hedges' testimony in petitioner's trial.

2. Against petitioner's claim that both Hedges and the Government agent Dugan lied about not discussing the sentence reduction, the Government relies on the same irrelevance as did the district judge, *i.e.*, the fact that Judge Timbers initiated discussions with the Government about the reduction (G.B. 5). The inescapable facts are, however, that the reduction occurred only because agent Dugan, (1) told Judge Timbers the Government would not oppose it and, (2) told Hedges to have his attorney file the motion; (3) the Government did not oppose the motion. Hedges' denial of any knowledge or discussion of these facts was, as pointed out in the petition (p. 8), utterly preposterous in view of the newly discovered evidence of the close relationship between Hedges and Dugan and Godwin's testimony about the promised sentence reduction.

3. The Government complains that Godwin's testimony is six years old (G.B. 4-5). Yet there is no suggestion that any of the participants in the perjury are presently unavailable to testify or that the Government is in any sense prejudiced by the delay. The real significance of the lapse of time is that petitioner suffered twelve years imprisonment on a patently unconstitutional conviction.

Respectfully submitted,

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